

2663/06
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by Shri Suraj S. Ch
21/6/06
R. to D.R. (J)

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Single Bench

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR (C.G.)

CRIMINAL APPEAL NO. 460 /2006

APPELLANT

(IN JAIL)

Siyaram, aged about 18 years,
Son of Shri Bishram Gond,
resident of Pendra, Police Station
Manpur, District Raipur,
Chhattisgarh (C.G.)

VERSUS

RESPONDENT

The State of Chhattisgarh,
through - the District Magistrate,
Distt. Raipur (Chhattisgarh)

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF
CRIMINAL PROCEDURE, 1973

APR 95

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 460 of 2006

Siya Ram

Vs.

State of Chhattisgarh

JUDGMENT

Post for 20.12.2006

Sd/-
Sunil Kumar Sinha
Judge

19.12.2006

(Sd/-
DT 6.12.06)

Seen:
Inj/Jan

(76)
APR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 460 of 2006

Siya Ram

Vs.

State of Chhattisgarh

Appearance:

Shri Yogesh Pandey, counsel for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer, for the State.

JUDGMENT

(20.12.2006)

Sunil Kumar Sinha, J.,

(1) The appellant has preferred this appeal challenging the conviction and sentence awarded to him on 03.4.2005 in Sessions Trial No.400/2005 by the 8th Addl. Sessions Judge (F.T.C), Raipur, (C.G), whereby after holding him guilty of the offence punishable under section 307 IPC, the learned A.S.J. has awarded the sentence of 7 years R.I. and fine of Rs.1000/-, in default of payment of fine to undergo 3 months R.I. more.

(2) The case of the prosecution is that on 14.8.2005 at about 10 p.m. the appellant was showing a knife to one Birbal (P.W.7). While brandishing the knife in the air, it torned clothes of Birbal and Birbal ranaway to his house out of fear. This was intervened by victim Bisahu Ram, (P.W.1), on which, the appellant caused one stab wound at his left Iliac-Fossa, which was 1 - 1½ cm width and was skin deep into the intra abdominal cavity. The victim was examined by Dr. K.C. Uraon (P.W.2) on 15.8.2005 who found the injury to be grievous in nature and who referred the victim to the Medical College, Hospital, for further treatment. On advice of the Doctor, X-Ray examination was also conducted, but no

abnormality was detected in the said examination as is contained in report (Ex.P.4).

(3) The learned A.S.J. after conclusion of the trial, held the appellant guilty u/s 307 IPC and sentenced him as above. It is against this judgment, passed by the A.S.J., the appellant has preferred this appeal.

(4) Learned counsel for the appellant raised only one point. His submission was that in the facts and circumstances, an offence u/s 307 IPC would not be made out and at the most, the appellant would be guilty of an offence punishable u/s 324 IPC. He referred to the two decisions of the Apex Court rendered in the matter of Sarju Prasad -Vs- State of Bihar AIR 1965 S.C. 843 and Hari Kishan & State of Haryana -Vs- Sukhbir Singh and others AIR 1988 S.C.2127.

(5) On the other hand, learned state Counsel, opposing the arguments, supported the judgment of the Sessions Court.

(6) I have heard learned counsel for the parties at length and have also perused the records of the sessions trial.

(7) In *Sarju Prasad's case (supra)* the Apex Court held that in order to bring the offence home to accused, the prosecution must establish that his intention was one of the three kinds mentioned in section 300 I.P.C. The state of mind of the accused has to be deduced from surrounding circumstances and motive would be a relevant circumstance and where the evidence is not sufficient to establish with certainty, existence of requisite intention of knowledge of accused, the accused can be convicted only u/s 324 and not u/s 307 IPC.

(8) In *Hari Kisan's case (supra)* the Apex Court further held that u/s 307 IPC, what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". U/s 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

(9) In the present case, if we examine the evidence of victim Bisahu Ram (P.W.1), it would appear that the incident took place while he was going to his house after closing his shop when the appellant met him on the way and asked him to accompany him to the shop for purchasing *Bidi*. At that time, the appellant was in drunken condition and he spoke at random which was resisted by the victim on which he gave a knife blow to the victim. This is the only occurrence which took place according to Bisahu Ram (P.W.1). Therefore, on the basis of evidence of P.W.1 itself, it would appear that the appellant had no grievance with the victim Bisahu (P.W.1) and he all of a sudden, inflicted the injury to the victim with the help of one small knife which he was holding when the victim resisted the talks and there appears to be no motive of the crime and the intention also does not appear to that of causing the

death of the victim and in the facts and circumstances, it cannot be said that element of intention or knowledge as are necessitated with certainty to constitute the offence of murder are present in the acts of the accused. More over, the nature of injury and the result of X-Ray examination, would also show that in fact the accused appellant had voluntarily caused hurt by dangerous weapon to the victim which resulted into above single injury. In the opinion of this Court, in the facts and circumstances of this case, an offence u/s 307 IPC would not be made out and the offence made out would be one u/s 324 IPC.

(10) In the result, the appeal is partly allowed. The conviction and sentence awarded to the appellant u/s 307 IPC are set aside. Instead, he is convicted u/s 324 IPC and is sentenced to the period already undergone which comes about more than 1 year and 3 months, as it is reported that the appellant is in jail since 07.9.2005.

Ordered accordingly.

Sd/-
Sunil Kumar Sinha
Judge

20.12.2006

/Rao/